



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
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WASHINGTON, DC 20350-2000

OPNAVINST 4860.7D  
N124  
28 Sep 2005

OPNAV INSTRUCTION 4860.7D

From: Chief of Naval Operations

Subj: NAVY COMMERCIAL ACTIVITIES PROGRAM

Ref: (a) OMB Circular A-76 of 29 May 03  
(b) DOD A-76 Costing Manual

Encl: (1) Navy Commercial Activities Program Manual

1. Purpose

a. To revise previously established policy, procedures, and responsibilities for use by Navy activities engaged in commercial activities.

b. To amplify the guidance issued by the Office of Management and Budget in reference (a) and the Department of Defense in reference (b). It provides program guidance for the Navy's Commercial Activities Program.

c. To provide guidance and procedures for determining whether recurring commercial activities will be performed by agency operations using Navy facilities and civilian employees or military personnel, or under contracts or agreements with commercial sources.

d. This instruction is a complete revision and should be reviewed in its entirety.

2. Cancellation. OPNAVINST 4860.7C.

3. Discussion. This instruction follows the outline of reference (a), and must be read in conjunction with it. Certain sections in this document contain brief discussions and summaries while other sections are absent of any text, to not repeat what is contained in reference (a).

4. Applicability. This instruction applies to all U.S. Navy and Naval Reserve organizations that perform commercial activities.

a. The Navy's Commercial Activities Program is a component of the Strategic Sourcing Program, including the consolidation, restructuring or reengineering of activities, privatization options, make or buy decisions, the adoption of better business management practices, and the termination of services or programs. In the context of Navy's reinvention efforts, the A-76 portion is focused on the competition of commercial activities.

b. Provisions of this instruction apply to all Navy activities and all competitions conducted under reference (a). Competitions conducted under the OMB Circular A-76 Revised Supplemental Handbook, March 1996, will to comply with this instruction.

c. Implementation of these procedures outside the United States, its territories and possessions, and the Commonwealth of Puerto Rico must be adapted to local law and treaties.

d. This instruction does not apply to:

(1) Products or services procured following treaties or international agreements.

(2) Non-appropriated fund instrumentalities staffed solely with civilian employees paid by nonappropriated funds. Procedures contained in this instruction are mandatory for nonappropriated fund instrumentalities commercial activities when partially staffed with civilian personnel paid by appropriated funds. The nonappropriated fund instrumentalities activities funded solely with nonappropriated funds may be included in competitions involving related functions.

(3) The management and conservation of natural and cultural resources under Department of Defense control, including planning, implementation, and enforcement functions.

5. Action

a. Each Budget Submitting Office will designate an official to have overall responsibility for implementation of their Competitive Sourcing Program, including the commercial activities program covered by this instruction.

b. Commanders at all levels will use the procedures of this instruction to conduct competitions for potential transfer of work between Navy civilian employees, military personnel, and the private sector, and will continuously review their commercial activities functions using the Inherently Governmental/Commercial Activities inventory as a tool to identify competitive sourcing opportunities.

6. Reports. This reporting requirement is approved per SECNAVINST 5214.2B and is implemented to comply with 10 U.S.C. 2463. Report Control Symbol OPNAV 4860-6 has been assigned to the requirements contained in appendix B.

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OPNAVINST 4860.7D  
28 Sep 2005

**NAVY COMMERCIAL ACTIVITIES  
PROGRAM MANUAL**

**CHIEF OF NAVAL OPERATIONS (N1)  
AUGUST 2005**

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**CHAPTER 1**  
**ROLES AND RESPONSIBILITIES**

1. Secretary of the Navy. The Office of the Secretary of the Navy will consult with the Chief of Naval Operations on issues concerning the following:

a. The Assistant Secretary of the Navy (Installations and Environment) is the Department of the Navy designated Component Competitive Sourcing Official. In this capacity, this office:

(1) Exercises overall responsibility within the Department of the Navy for commercial activities policies and exceptions to policy.

(2) Provides direction and oversight to the Competitive Sourcing Acquisition Centers of Excellence Board of Directors.

(3) Represents the Department of the Navy on program issues with Congress, the Office of the Secretary of Defense, other Services, other Federal agencies, and the Office of Management and Budget.

(4) Appoints, in writing, competition officials for standard and streamlined competitions.

(5) Approves time limit waivers for streamlined competitions.

(6) Approves the use of government-furnished property, performance bonds, and award fees in a solicitation issued for a competition.

(7) Approves solicitation requirements for any private sector performance bonds.

(8) Approves solicitations with award fees in standard competitions.

(9) Approves, in consultation with the contracting officer, amending the solicitation closing date to accommodate the submission of the agency tender.

(10) Evaluates the contracting officer's written documentation and proposed courses of action where no satisfactory commercial sources are available. Make recommendations to the Competitive Sourcing Official to revise the solicitations or implement the agency tender.

(11) Makes determinations regarding deficiencies in an agency tender.

(12) Reviews and concurs on A-76 actions for DOD Competitive Sourcing Official approval.

b. The Assistant Secretary of the Navy (Research, Development, and Acquisition) chairs the Competitive Sourcing Acquisition Center of Excellence Board of Directors and provides acquisition management expertise and oversight for all aspects of acquisition including acquisition planning, source selection, contract administration, and quality assurance to support the Navy's Commercial Activities Program.

c. The Assistant Secretary of the Navy (Financial Management and Comptroller):

(1) Provides financial management and cost estimating expertise and represents Navy on program issues before Congressional appropriations committees.

(2) Verifies integration of all Competitive Sourcing actions into the budget phase of the Navy Planning, Programming, Budgeting, and Execution System.

d. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) provides military and civilian personnel and manpower management expertise.

e. The General Counsel of the Navy/Office of the General Counsel provides legal expertise for the Commercial Activities program.

f. The Chief of Legislative Affairs:

(1) Represents Navy on program issues before Congress.



(2) Monitors the development and passage of legislation affecting the program and notifies the Chief of Naval Operations (N1) about pertinent legislation.

(3) Notifies Congress of Navy's intent to analyze commercial or industrial functions.

(4) Informs Congress of competition(s) progress as required by statute.

(5) Notifies Congress of competitions results.

(6) Liaisons with Congress regarding competition(s).

g. The Chief of Information, Navy Department represents Navy on program issues before the news media and the public.

2. Chief of Naval Operations (N1) shall:

a. Act for the Office of the Chief of Naval Operations as Navy's Competitive Sourcing Executive Program Manager.

b. Monitor the program's progress via the Database of Strategic Sourcing Initiatives.

c. Coordinate with the Assistant Secretary of the Navy (Installations and Environment) on activities requiring Department of the Navy Component Competitive Sourcing Official (or higher) approval.

d. Identify savings from competition(s) per OMB Circular A-11.

e. Provide overall programmatic direction, oversight, and policy to the Competitive Sourcing Acquisition Centers of Excellence.

f. Program resources to execute Navy's Competitive Sourcing Program.

g. Justify in writing the designation of government personnel performing inherently governmental activities.

h. Approve the results of the Inherently Governmental/Commercial Activities annual inventory, including assignment of Manpower Mix Criteria Code "M": "exempted by management determination".

i. Publish guidance for the policies and procedures of the commercial activities program.

j. Prepare Congressional Notifications and Announcements of intent to analyze commercial or industrial functions and appropriate Congressional Decision notification of intent to award contracts or implement Most Efficient Organizations affecting more than 50 full time equivalents. This shall be based on reports submitted via the Database of Strategic Sourcing Initiatives. These include:

(1) Notifying commands of functions to undergo preliminary planning and competition.

(2) Approving all conversions of civilian positions prior to contract award or Most Efficient Organization implementation.

k. Monitor the overall progress of the program and maintain competition efforts including the review and approval of schedules for competitions.

l. Approve the lead Budget Submitting Office responsibility for competitions that cross Budget Submitting Office organization lines and direct appropriate liaison between these Budget Submitting Offices.

m. Periodically update manpower data tools to assist Budget Submitting Offices with identifying candidates for competition(s) that support military manpower and personnel requirements.

n. Evaluate military billets to identify the impact on personnel and manpower considerations (e.g., sea/shore rotation, home-basing opportunity and career progression, and other community management issues) and verify that each billet has funding across the Future Years Defense Program.

3. Chief of Naval Operations (N093) has the lead responsibility for monitoring competitions within Navy's health care programs and coordinating these actions with the Defense Health Program.

4. Chief of Naval Operations (N8) shall integrate Navy's Commercial Activities program into Navy's Planning, Programming, Budgeting, and Execution System process.

5. Budget Submitting Offices shall:

a. Implement and manage Navy's Commercial Activity program for all subordinate elements as directed by this instruction.

b. Develop central expertise in functional areas under the Budget Submitting Office's cognizance, including standard performance requirements.

c. Submit all required reports in the Database of Strategic Sourcing Initiatives.

d. Validate the Performance Work Statement/Statement of Work to ensure independence from the Agency Tender Official, Human Resource Advisor, and most efficient organization team, validate that the Performance Work Statement/Statement of Work reflects fiscally informed performance standards, and recommend a Performance Work Statement/Statement of Work Team Leader for the competition.

e. Recommend an Agency Tender Official for competitions at activities under their authority.

f. Monitor the schedule of development of the agency tender, most efficient organization, and agency cost estimate.

g. Ensure that the Agency Tender Official appoints a most efficient organization team.

h. Conduct Inherently Governmental/Commercial Activities inventory for the activities under their cognizance as planned.

i. Manage the competition for functions under their cognizance in coordination with appropriate resource sponsors and Competitive Sourcing Acquisition Center of Excellence to

ensure products and services are obtained in the most cost efficient manner, per the criteria in this instruction and other applicable laws and regulations.

j. Verify field activities receive adequate oversight during the competition process by:

(1) Coordinating the preliminary planning process to ensure appropriate business units are designated for competitions and executable schedules are projected.

(2) Providing technical assistance and verifying that field activity commands meet the reporting requirements of this instruction. Collect and enter data as required by this instruction into the Database of Strategic Sourcing Initiatives.

(3) Verifying Post Competition Performance Monitoring is conducted at each activity.

k. Designate the lead claimant responsibility for competitions that cross Budget Submitting Office organization lines and direct appropriate liaison between these offices.

6. Activity Commanders, their equivalent, or designee shall:

a. Accomplish all competitive sourcing actions requiring approval, including new requirements, expansions, and governmental function determination, per this instruction.

b. Maintain manpower requirements current with manpower mix criteria and function codes to facilitate conducting the annual Inherently Governmental/Commercial Activities inventory.

c. In coordination with the chain of command, nominate functions for competition.

d. Support the Performance Work Statement team leader in the development of the Performance Work Statement and designated Agency Tender Official for competitions of activities under their authority.

e. Collect and report to the Budget Submitting Office and in the Database of Strategic Sourcing Initiatives the information required by this instruction regarding competitions.

f. Supervise the implementation of the most efficient organization and achieve most efficient organization operation per the phase-in plan.

g. Ensure funds are available for contractual obligations as a result of a competition performance decision.

h. Provide a sufficient number of qualified personnel to accomplish performance assessment/quality assurance.

i. Identify any requirements changes and develop, in conjunction with the appropriate contracting officer, proposed modifications to the contract or letter of obligation. Provide these changes, including cost estimates and cost impact, to the Budget Submitting Office and the Competitive Sourcing Acquisition Center of Excellence.

7. Competitive Sourcing Acquisition Centers of Excellence  
Contracting officers will:

a. Serve as an advocate of competition and promote a fair and impartial competitive environment for Navy and the private sector.

b. Coordinate with the Chief of Naval Operations (N124) to ensure a consistent programmatic approach is taken for efficiency and effectiveness to maximize competition and generate the greatest savings, to include:

(1) Recommending appointment of the contracting officer and the source selection authority.

(2) Participating in the preliminary planning phase to develop and approve an acquisition plan.

(3) In coordination with the Budget Submitting Office, recommending grouping and scope of functions to maximize competition.

c. Perform all contracting officer duties including market research, Performance Work Statement contractibility reviews, solicitation, and source selection.

d. Establish templates to facilitate standardized formats for the Performance Work Statement and coordinate with the Budget Submitting Office and designated activity-level teams in developing the Statement of Work for streamlined competitions.

e. Develop and certify the private sector cost for each streamlined competition, ensure the Streamlined Competition Form is administratively complete, and designate a representative (other than the contracting officer responsible for developing the cost of private sector performance) to certify the performance decision.

f. Prepare the solicitation for standard competitions, solicit private sector offers, certify the performance decision on the Standard Competition Form, and ensure the Standard Competition Form is administratively complete.

g. Evaluate the agency cost estimate and maintain expertise in calculating public/private competition costs, including the use of COMPARE software.

h. Obtain Chief of Naval Operations (N1) approval before award if solicitation results in a decision to convert to contract.

i. Issue the letter of obligation or contract for standard and streamlined competitions and maintain the competition file.

8. Human Resource Advisor shall coordinate with the appropriate service center to meet the Human Resource Advisor's responsibilities of the Circular.

**CHAPTER 2**  
**OMB CIRCULAR ATTACHMENT A - INVENTORY PROCESS**

1. Inventory Requirements. Budget Submitting Offices and activities will comply with the Inherently Governmental/Commercial Activities Inventory Guidance issued annually by the Department of Defense.

**CHAPTER 3**  
**OMB CIRCULAR ATTACHMENT B - PUBLIC-PRIVATE COMPETITION**

1. Preliminary Planning

a. Budget Submitting Offices, in coordination with the activity commanders and the Competitive Sourcing Acquisition Centers of Excellence, will direct this process. The Chief of Naval Operations (N1) will provide consultant support. The period for completing preliminary planning will be based on the scope and complexity of the functions being reviewed. The result of this process, as described in this instruction, should be a functional grouping of business units conducive to the completion of the competition(s) within the required periods.

b. A preliminary planning report will be submitted in the Database of Strategic Sourcing Initiatives before the commencement of the preliminary planning period, outlining the general functions, locations, and estimated number of positions to be reviewed for potential competition. The respective Budget Submitting Office will complete the preliminary planning report in the Database of Strategic Sourcing Initiatives. The Chief of Naval Operations (N1) will prepare a Courtesy Congressional Notification based on this information. Preliminary planning may not begin prior to delivery of the Courtesy Notification to the Senate and House Armed Services and Appropriations committees. The courtesy notification is also provided to interested members of Congress. The Chief of Naval Operations (N1) will notify Budget Submitting Offices and the Competitive Sourcing Acquisition Centers of Excellence once the notification has been made. The Chief of Naval Operations (N1) will also provide consultant support for the planning process after approving this report. The preliminary planning start date will be the date that funds are obligated for contract support. As a part of this process, activity commanders will annually identify to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) all potential reductions in force that may result from subsequent competitions.

c. Analysis of the business unit may not be conducted before Congressional notification during the preliminary planning period. The definition of specific performance requirements and most efficient organization staffing are



examples of the types of analysis that are not to be conducted before Congressional notification.

d. Any time limit deviation must be approved by the Competitive Sourcing Official, via the Chief of Naval Operations (N1) and the Component Competitive sourcing Official, before public announcement. Budget Submitting Offices should submit a written request for time limit deviation as early in the preliminary planning process as possible to allow maximum time to process requests.

e. Per reference (a), the following shall be completed prior to public announcement:

(1) Scope

(a) Activity commanders will recommend commercial functions for competition through the chain of command to the Budget Submitting Offices and the Chief of Naval Operations (N1). If recommending military authorizations, an activity or Budget Submitting Office must obtain approval from the Chief of Naval Operations (N12), who will coordinate with military community managers (Commander, Navy Personnel Command (PERS-4)), and ensure there is appropriate funding to support the function if performed by civilians (government or contractor). The Chief of Naval Operations (N1) will verify recommendations are consistent with total force manpower management.

(b) The types of functions/number of positions for competition will be approved at the completion of the preliminary planning phase. Changes will not be allowed once the competition has been announced without first obtaining approval from the Chief of Naval Operations (N1).

(2) Grouping. Every effort should be made to coordinate competition of common functions as business units at all sites.

(3) Workload Data and Systems. In conducting the functional scope planning, assess the availability of workload data, determine appropriate work units, and identify quantifiable outputs of processes and performance standards. As necessary, establish appropriate data collection systems.

(4) Baseline Costs

(a) Baseline costs will be gathered and computed using the COMPARE program during the preliminary planning period. The individuals involved in preliminary planning and the preparation of these costs may not be the same individuals that may eventually be included on the Agency Tender/most efficient organization team.

(b) Baseline costs will be recorded in the Database of Strategic Sourcing Initiatives.

(5) Type of Competition. (See reference (a).)

(6) Schedule. Budget Submitting Offices, in coordination with activity commanders and the Competitive Sourcing Acquisition Center of Excellence, shall develop preliminary competition schedules and a plan of action and milestones. The plan of action and milestones will be approved and monitored by the Budget Submitting Office. While complexity, size, and previous experience will influence competition time requirements, activity commanders should provide for completing competitions within the appropriate time limits. The Chief of Naval Operations (N1) will obtain time limit deviation approval before public announcement.

(7) Roles and Responsibilities of Participants. Activity commanders shall ensure appropriate resources are available to support the roles and responsibilities of competition participants. A-76 training for the appropriate team members should be planned during this phase so that training can commence immediately after the competition start date.

(8) Competition officials will be designated as required by the Circular.

(a) The ATO. (See reference (a).)

(b) The contracting officer will be nominated from the staff of the Competitive Sourcing Acquisition Centers of Excellence unless specific authorization to use a different contracting office has been received from the Competitive Sourcing Acquisition Centers of Excellence Board of Directors.

(c) The Performance Work Statement/Statement of Work team leader will be nominated by the Budget Submitting Office.

(d) The Budget Submitting Office will nominate the Source Selection Authority per the approved acquisition plan.

(9) Incumbent Service Providers. (See reference (a).)

(10) Acquisition Plan. The Competitive Sourcing Acquisition Center of Excellence will coordinate with Budget Submitting Offices and activity commanders to outline the type of solicitation, source selection process, targeted private sector providers, and incentives to performance. Prior to the completion of the Performance Work Statement and Solicitation, the Competitive Sourcing Acquisition Center of Excellence will report the length of time planned for each performance period in the Solicitation and the designated phase-in period in accordance with reference (a) to Chief of Naval Operations (N1), via N124 and the Assistant Secretary of the Navy (Installation and Environment).

(11) Announcement Module. Budget Submitting Offices will complete an announcement module in the Database of Strategic Sourcing Initiatives for each business unit grouped for competition. The Chief of Naval Operations (N1) will approve the module, including selected functions and positions before any requisite Congressional Announcement.

(a) Congressional Announcement will be made during the preliminary planning period. Budget Submitting Offices will submit this data to the Chief of Naval Operations (N1) as soon as possible.

(b) The Chief of Naval Operations (N1) will notify the Budget Submitting Offices, activities, and the Competitive Sourcing Acquisition Centers of Excellence once Congressional Announcement(s) has been made.

## 2. Public Announcements

a. The contracting officer at the Competitive Sourcing Acquisition Center of Excellence will coordinate with Budget

Submitting Offices and activity commanders to make the requisite Federal Business Opportunities announcement and concurrent local level public announcement to begin the competition. The formal public announcement, via Federal Business Opportunities, is the start date of the competition for A-76 Circular and statutory time limit purposes. Each competition, according to its functional classification (single or multi), must reach initial performance decision by the statutory deadline to prevent a violation of the Annual Department of Defense Appropriations Act. As defined annually within the Act, a single function initiative is the competition of a single commercial activity function code at a single geographic location. All other initiatives are considered multi-function initiatives.

b. For OMB Circular and appropriations time limit purposes, the end date is the date the initial performance decision is reached.

c. Cancellations must be approved via the chain of command through the Chief of Naval Operations (N1) in coordination with higher authority.

### 3. Streamlined Competition Procedures

a. While reference (a) permits streamlined competition involving 65 or fewer full time equivalents, appropriations law requires Navy activities to formulate a most efficient organization and apply the conversion differential for conversions to contract performance involving more than 10 civilian employees. This conversion differential is 10% of the most efficient organization's personnel-related costs for performance of that activity or function by Federal employees or \$10 million.

b. If a solicitation is issued, a solicitation report must be submitted in the Database of Strategic Sourcing Initiatives within 10 working days of the solicitation issue date. If a solicitation is not issued, activities must submit a report within 10 days of the decision not to issue a solicitation and select "No Solicitation" on the solicitation report.

(1) Streamlined Competition Form. See reference (a).

(a) Cost of Agency Performance. The Agency Tender Official will use the COMPARE application to calculate the agency cost estimate (lines 1-4, and 6 of the Streamlined Competition Form) based upon the requirements, sign the form, and provide the COMPARE file and the signed form to the Competitive Sourcing Acquisition Center of Excellence.

(b) Cost of Private Sector/Public Reimbursable Performance. (See reference (a).)

(c) Adjusted Cost Estimate. (See reference (a).)

(d) Cost estimate Firewalls. (See reference (a).)

(2) Time Limit

(a) A streamlined competition of an activity shall not exceed 90 calendar days unless a waiver has been obtained before public announcement.

(b) If the potential for a competition to extend beyond the time limit becomes evident, the Budget Submitting Office must report a description of problems encountered, remedial actions to be taken, status, and expected completion date to the Chief of Naval Operations (N1) as soon as possible.

(3) Performance Decision in a Streamlined Competition. Streamlined competitions are complete once certifications are recorded on the Streamlined Competition Form. The performance decision is implemented after the requisite notifications and authorization from the Chief of Naval Operations (N1).

(a) Streamlined Competition Form Certifications

1. The Agency Tender Official will certify the estimated agency tender and provide basis for this certification to the Competitive Sourcing Acquisition Center of Excellence.

2. A contracting officer at the Competitive Sourcing Acquisition Center of Excellence will certify the estimated cost of a private sector offer.

3. A representative of the Competitive Sourcing Acquisition Center of Excellence (other than the contracting officer who certified the private sector offer) will certify the estimated total costs and performance decision represented on the Streamlined Competition Form.

(b) Streamlined Competition Form Review. (See reference (a).)

(c) Public Announcement. Before public announcement, the following must be completed:

1. A Tentative Decision Report must be submitted in the Database of Strategic Sourcing Initiatives within 3 working days of the initial performance decision. For competitions involving more than 50 full time equivalents, activities must complete the economic impact portion of the report and should consider that in the case of a contract decision, contract employees will often continue to perform the converted function in the same geographic area. The economic impact upon the geographic area will usually be minimal. If activities cannot calculate precise numbers for this portion of the report, they should submit an estimate.

2. A Final Decision Report will be submitted in the Database of Strategic Sourcing Initiatives within 3 working days of the final performance determination. The Chief of Naval Operations (N1) will prepare the necessary Congressional Decision Notification.

3. The Chief of Naval Operations (N1) will coordinate delivery of the Congressional Decision Notification and notify the Competitive Sourcing Acquisition Center of Excellence and Budget Submitting Office to proceed with the performance decision. Budget Submitting Offices may not implement the Most Efficient Organization or convert to contractor performance until the Congressional Decision Notification has been delivered to requisite members of Congress.

4. The Competitive Sourcing Acquisition Center of Excellence, Budget Submitting Office, and activity commanders

will coordinate to make the Federal Business Opportunities announcement and local performance decision announcements.

(d) Implementing the Streamlined Performance Decision

1. Private Sector or Public Reimbursable Performance Decision. The Chief of Naval Operations (N1) will authorize contract award in the event of the sealed bid solicitation or commencement of contract performance of a negotiated solicitation by return response after issuing all the appropriate Congressional Decision Notifications. Activities must receive permission from the Chief of Naval Operations (N1) to proceed with contract decisions in any competition, regardless of the competition size.

2. Agency Performance Decision. The activity may proceed with implementation after notified by their Budget Submitting Office that the Chief of Naval Operations (N1) has approved the final decision report and delivered any required Congressional Decision Notifications. If a solicitation was issued, the solicitation may only be cancelled after the final performance decision date.

4. Standard Competition Procedures

a. Time Limit. If the potential for a competition to extend beyond the reference (a) policy time limits becomes evident, Budget Submitting Offices must report a description of problems encountered, remedial actions to be taken, status, and expected completion date to the Chief of Naval Operations (N1) as soon as possible.

b. Team Designations. (See reference (a).)

c. The Solicitation and Quality Assurance Surveillance Plan

(1) A Solicitation Report must be submitted in the Database of Strategic Sourcing Initiatives within 10 working days of the date of solicitation issuance.

(2) Quality Assurance Surveillance Plan

(a) Department of Defense guidance for performance based services acquisition identifies the "performance assessment plan" as the Quality Assurance Surveillance Plan. These terms are used interchangeably.

(b) The Quality Assurance Surveillance Plan describes methods of inspection, performance metrics, required reports, and the needed resources, including estimated work hours, to verify quality. It is implemented once the phase-in plan has been executed and must be applied to measure the performance of the Service Provider against the Performance Work Statement requirements.

(3) Competition File. (See reference (a).)

(4) The Agency Tender, Private Sector Offers, and Public Reimbursable Tenders. (See reference (a).)

(a) Agency Tender

1. Developing the Agency Tender. The Agency Tender Official will formulate a most efficient organization to accomplish the workload outlined in the Performance Work Statement.

a. Most Efficient Organization. The most efficient organization must address each performance requirement from the Performance Work Statement, and correlate the full time equivalents required to accomplish the workload.

b. The Agency Cost Estimate. The Agency Tender Official will use the COMPARE application to calculate the agency cost estimate (lines 1-6 of the Standard Competition Form) based upon the requirements and sign the form.

c. Quality Control Plan. (See reference (a).)

d. Phase-in Plan. (See reference (a).)

2. Submission of the Agency Tender. The certified agency cost estimate submitted to the Competitive Sourcing Acquisition Center of Excellence must include the



signed Standard Competition Form and the supporting COMPARE file.

reference (a).) 3. Changes to the Agency Tender. (See

(a).) 4. Procurement Sensitivity. (See reference

(b) Private Sector Offers. (See reference (a).)

(c) Public Reimbursable Tenders. (See reference (a).)

(d) No Satisfactory Private Sector or Public Reimbursable Source. (See reference (a).)

1. Determine Reasons. If a solicitation does not result in any bids/offers, the Competitive Sourcing Acquisition Center of Excellence will consult with and make recommendations to the Chief of Naval Operations (N1) concerning a review of the solicitation, and draft a proposed course of action for the Component Competitive Sourcing Official.

2. Required Action. Activities must submit a new Solicitation Report within 10 days of the Solicitation Issue date.

(5) The Source Selection Process and Performance Decision. (See reference (a).)

(a) Sealed Bid Acquisition. (See reference (a).)

(b) Negotiated Acquisition. (See reference (a).)

1. Lowest Price Technically Acceptable Source Selection. (See reference (a).)

2. Phased Evaluation Source Selection. (See reference (a).)

(c) Special Considerations

1. Evaluation of Private Sector Offers, Public Reimbursable Tenders, and Agency Tender.

2. Exchanges with Private Sector, Public Reimbursable, and Agency Sources.

3. Deficiencies in an Offer or Tender. Except as otherwise permitted by law, the Competitive Sourcing Acquisition Center of Excellence will not exclude the Agency Tender from the competition.

4. Price Analysis and Cost Realism of Private Sector Cost Proposals, Public Reimbursable Cost Estimates and Agency Cost Estimates. (See reference (a).)

(6) Performance Decision in a Standard Competition.

(a) Certification.

(b) End Date. Performance decisions for standard competitions are signified by the initial completion of Standard Competition Form certifications. The performance decision is implemented after the requisite notifications are delivered and authorization provided by the Chief of Naval Operations (N1).

1. A Tentative Decision Report must be submitted in the Database of Strategic Sourcing Initiatives within 3 working days of the initial performance decision. For competitions involving more than 50 full time equivalents, activities must complete the economic impact portion of the report and should consider that, in the case of a contract decision, contract employees will often continue to perform the converted function in the same geographic area. The economic impact upon the geographic area will usually be minimal. If activities cannot calculate precise numbers for this portion of the report, they should submit an estimate.

2. A Final Decision Report must be submitted in the Database of Strategic Sourcing Initiatives following the resolution of any competition process contests within 3 working days of the final performance decision. The Chief of Naval Operations (N1) will prepare the necessary Congressional notifications.

3. The Chief of Naval Operations (N1) will coordinate delivery of the Congressional Decision Notification and notify the Competitive Sourcing Acquisition Center of Excellence and Budget Submitting Offices to proceed with the performance decision. Budget Submitting Offices may not implement the Most Efficient Organization or convert to contractor performance until notified that the Congressional Decision Notification has been delivered to requisite members of Congress.

(c) Public Announcement of the Performance Decision. The Competitive Sourcing Acquisition Center of Excellence and Budget Submitting Office will coordinate to make the Federal Business Opportunities announcement and local performance decision announcements after the Chief of Naval Operations (N1) approval of the final performance decision report in the Database of Strategic Sourcing Initiatives.

(d) Debriefing. Activity commanders will coordinate with Budget Submitting Offices and the Competitive Sourcing Acquisition Center of Excellence to offer a joint debriefing for directly affected employees (and their representatives).

(e) Release of the Certified Standard Competition Form and Tenders (see reference (a)).

(f) Implementing a Performance Decision. Activities will comply with SECNAVINST 12351.5F.

1. Private Sector Provider. The Competitive Sourcing Acquisition Center of Excellence must receive authorization from the Chief of Naval Operations (N1) before proceeding with a contract award in any competition, regardless of the size.

2. Public Reimbursable Provider. The Competitive Sourcing Acquisition Center of Excellence must receive authorization from the Chief of Naval Operations (N1) before proceeding with public reimbursable decisions in any competition, regardless of the size.

3. Agency Provider. The Competitive Sourcing Acquisition Center of Excellence shall establish a most efficient organization letter of obligation with the activity commander or appropriate official. The activity may proceed with most efficient organization implementation following Budget Submitting Office notification of Chief of Naval Operations (N1) approval of the Final Decision Report in the Database of Strategic Sourcing Initiatives. The solicitation may only be cancelled after the final performance decision date.

5. Post Competition Accountability for Streamlined and Standard Competitions

a. Best Practices and Lessons Learned. The Competitive Sourcing Acquisition Centers of Excellence will coordinate with Budget Submitting Offices and submit best practices and lessons learned quarterly to the Chief of Naval Operations (N1).

b. Execution Tracking of Streamlined and Standard Competitions is handled through the Database of Strategic Sourcing Initiatives.

c. The Competitive Sourcing Quarterly Report is submitted from data contained in the Database of Strategic Sourcing Initiatives by N1.

d. Monitoring Performance

(1) Budget Submitting Offices will document and approve changes to the requirements of the Performance Work Statement necessary to meet an increase or decrease in mission, tasking, or funding. Documentation of changes to the Performance Work Statement/Statement of Work must be submitted to the Database of Strategic Sourcing Initiatives.

(2) The Competitive Sourcing Acquisition Center of Excellence or delegated authority, in coordination with the Budget Submitting Offices, will administer the contract or Letter of Obligation, including any modifications that account for changes in mission or service levels consistent with budgets approved by the resource sponsor.

(3) Activity commanders will align their organizations and address any changes to the most efficient organization that

must be made as a result of Performance Work Statement modifications. These changes should be made in compliance with the requirements of OPNAVINST 1000.16J.

(4) Budget Submitting Offices will document action taken subsequent to performance decision, and will:

(a) Submit a Conversion Report in the Database of Strategic Sourcing Initiatives when the performance decision result is contract award, not later than 30 working days after contract start date.

(b) Submit a Most Efficient Organization Implementation Report in the Database of Strategic Sourcing Initiatives when the competition results in an agency performance decision, not later than 180 working days after continued agency performance is authorized.

(c) Budget Submitting Offices must review all Most Efficient Organizations within 90 calendar days of the end of each performance period as prescribed in the Post Implementation Review Guide posted to the OPNAV Strategic Sourcing website: <http://strategicsourcing.navy.mil>. Upon completion of the Post Implementation review, Budget Submitting Offices shall submit the completed Review Guide in the Database of Strategic Sourcing Initiatives.

(d) Submit an Annual Update Report in the Database of Strategic Sourcing Initiatives, within 30 calendar days after the completion of each period of performance.

(5) Option Years of Performance and Follow-on Competition

(a) Option Years of Performance. (See reference (a).)

(b) Follow-on Competition. (See reference (a).)

(6) Terminations. Activities will inform the appropriate contracting officer and Budget Submitting Offices of poor performance discovered during performance monitoring. The contracting officer will coordinate notifications to the service

provider of poor performance with the Chief of Naval Operations (N1). If a private sector service provider meets the criteria for termination for default, the contracting officer shall coordinate this action with the Chief of Naval Operations (N1). If the contracting officer recommends to the Chief of Naval Operations (N1) to terminate the Agency Letter of Obligation, the Component Competitive Sourcing Official must approve this action, and the Competitive Sourcing Acquisition Center of Excellence will coordinate with the Chief of Naval Operations (N1) to immediately begin a streamlined or standard competition process.

6. Contests

a. Standard Competitions

(1) Budget Submitting Office will submit a Contest/Protest Notification Report in the Database of Strategic Sourcing Initiatives within 3 working days of the receipt of a contest. This report includes the contest/protest action disputed and the contest/protest source. A separate report must be filed for each contest/protest received.

(2) Within 3 working days of resolution of the contest, the Budget Submitting Office will submit a Contest/Protest Resolution Report in the Database of Strategic Sourcing Initiatives. A separate resolution report must be filed for each contest resolution corresponding to the appropriate notification report.

b. Streamlined Competitions. (See reference (a).)

**CHAPTER 4**  
**OMB CIRCULAR ATTACHMENT C**  
**CALCULATING PUBLIC-PRIVATE COMPETITION COSTS**

1. Overview

a. Public-Private Competition Costs. This guidance serves as the Navy supplement to the OMB Circular A-76 (2003) and the Department of Defense A-76 Costing Manual Interim Guidance. Address requests for deviation from the following amplifying Navy requirements to the Chief of Naval Operations (N1) via the chain of command. Requests should clearly indicate the special circumstances that require the change. The Navy cannot grant waivers or deviations from individual portions of the Office of Management and Budget Circular A-76 guidance, Department of Defense guidance (unless such authority is specified), or from the legal requirements listed in appendix C entitled Principal Statutes Governing Commercial Activities.

b. Compare. (See reference (a).)

2. Cost of Agency Performance (Standard Competition Form/Streamlined Competition Form lines 1-6) and Cost of Public Reimbursable Performance (Standard Competition Form/Streamlined Competition Form lines 1a - 6a).

a. Scope. (See reference (a).)

b. Personnel Costs (line 1/1a).

(1) Labor Costs

(a) Military personnel are permitted in the agency cost estimate for standard or streamlined competitions if the Agency Tender Official can coordinate a plan to utilize these billets in either possible outcome of the competition. Costs must be calculated using the full military composite rates provided by the Department of Defense Comptroller.

(b) Civilian personnel may be assigned to replace military personnel when developing the most efficient organization. Civilian grade level requirements should be based on civilian grade standards and the nature of the work to be

performed and not on any civilian-to-military grade relationship.

(c) Costs for Nonappropriated Fund employees must include the following fringe benefit factors when computing Nonappropriated Fund labor:

FRINGE BENEFIT	FULL TIME	PART TIME	FLEXIBLE
Retirement	7.65	7.65	7.65
Insurance/Health	8.7	6.2	0.0
Miscellaneous*	3.5	5.1	6.5

\*This includes workman's compensation, bonuses/awards, and unemployment programs.

1. When estimating full time equivalents, Nonappropriated Fund flexible employees use the same assumptions as intermittent civil servants.

2. For Nonappropriated Fund employees, salaries, excluding benefits, for the Agency Tender will reflect the actual salary that will be paid to the employee filling a position listed in the most efficient organization. The salary computation for vacant Nonappropriated Fund positions or newly created positions will be an average of the salaries currently paid to all Nonappropriated Fund employees in the same series and pay band at the activity.

(2) Prorated Labor. (See reference (a).)

(3) Administration and Inspection Costs for a Most Efficient Organization Letter of Obligation.

(4) Full Time Equivalents. (See reference (a).)

(5) Civilian Position Pay and Wages. (See reference (a).)

(6) Civilian Position Fringe Benefits and Federal Insurance Contribution Act. (See reference (a).)

(7) Other Civilian Pay. (See reference (a).)



(8) Other Civilian Pay Entitlements. (See reference (a).)

(9) Non-Foreign Area Civilian Employee Cost-Of-Living Allowance. (See reference (a).)

(10) Administration and Surveillance Cost for Most Efficient Organization Subcontracts. (See reference (a).)

(11) Labor Escalation. (See reference (a).)

(12) Labor Inflation Cost Factors. (See reference (a).)

(13) Uniformed Services Labor. (See reference (a).)

c. Material and Supply Costs (Standard Competition Form/Streamlined Competition Form line 2/2a). (See reference (a).)

d. Other Specifically Attributable Costs (Standard Competition Form/Streamlined Competition Form 3/3a). (See reference (a).)

e. Overhead (Standard Competition Form/Streamlined Competition Form line 4/4a). (See reference (a).)

f. Additional Costs (Standard Competition Form line 5/5a). (See reference (a).)

g. Total Cost of Agency Performance (Standard Competition Form/Streamlined Competition Form line 6/6a). (See reference (a).)

3. Adjusted Cost of Private Sector or Public Reimbursable Performance (Standard Competition Form/Streamlined Competition Form lines 7 - 13).

a. Contract Price or Public Reimbursable Cost Estimate (line 7). (See reference (a).)

b. Contract Administration Costs (line 8). (See reference (a).)

- c. Additional Costs (line 9). (See reference (a).)
- d. One-Time Conversion (line 10). (See reference (a).)
- e. Gain on Assets (line 11). (See reference (a).)
- f. Federal Income Tax Adjustment (line 12). (See reference (a).)
- g. Total Adjusted Cost of Private Sector or Public Reimbursable Performance (line 13). (See reference (a).)
- 4. Conversion Differential (line 14). (See reference (a).)
- 5. Adjusted Total Cost of Agency Performance (line 15). (See reference (a).)
- 6. Adjusted Total Cost of Private Sector or Public Reimbursable Performance (line 16). (See reference (a).)
- 7. The Cost Difference (line 17). (See reference (a).)
- 8. Low-Cost Provider (line 18). (See reference (a).)

## **APPENDIX A DEFINITIONS**

Acquisition Plan - Addresses the technical, business, management, and other significant considerations that will control all acquisitions.

Competitive Sourcing Acquisition Centers of Excellence - Responsible for providing the acquisition functions associated with A-76 competitions.

Congressional Announcement - Written notification to interested members of Congress regarding the beginning of an A-76 public-private competition per 10 U.S.C. 2461.

Congressional Decision Notification - Written notification to interested members of Congress regarding the performance decision as a result of an A-76 public-private competition per 10 U.S.C. 2461.

Courtesy Congressional Notification - Written notification to interested members of Congress regarding preliminary planning actions.

Database of Strategic Sourcing Initiatives- The automated system used to track, collect, and maintain data for standard and streamlined competitions. This system is required for compliance with 10 U.S.C. 2463, Executive Order 12615, Performance of Commercial Activities, OMB Circular A-76, and DODI 4100.33 of 9 September 1985.

Economic Impact Statement - A list of economic impact indicators to the community resulting from competition, reported in the Database of Strategic Sourcing Initiatives. If more than 50 employees of all categories (military, civilian, permanent, temporary, etc.) are affected by conversion, activities will assess the economic impact on the local community and the Federal Government. Activities must address economic impact after contract costs are known. Activities will address the following items in the economic impact statement (10 U.S.C. 2461):

- Total population of the affected community.

- Change in business volume of the affected community.
- Change in total personal income of the affected community.
- Change in total employment of the affected community.
- Impact on tax base of the affected community.

Negotiated Acquisition - A type of acquisition strategy where contractors submit offers in response to a request for proposals, per the Federal Acquisition Regulation, part 15.

Nonappropriated Fund Instrumentality - An integral Department of Defense organizational entity that performs government functions. It acts in its own name to provide or assist Department of Defense Components in providing morale, welfare, and recreational programs for military personnel and authorized civilians. It is established and maintained individually or jointly by the heads of the Department of Defense components. As a fiscal entity, it maintains custody of and control over its nonappropriated funds. It is also responsible for the reasonable care to administer, prudently safeguard, preserve, and maintain those appropriated fund resources made available to carry out its function. With its nonappropriated funds, it contributes to the morale, welfare, and recreational programs of other authorized organizational entities. It is not incorporated under the law of any State or the District of Columbia, and it enjoys the legal status of an instrumentality of the United States.

Preferential Procurement Program - These are special commercial source programs such as the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act.

Procurement Integrity Act - The Procurement Integrity Act (41 U.S.C. 423) generally establishes prohibitions, restrictions, and requirements relative to disclosing or obtaining procurement information, reporting employment contacts, and post-government employment.

Proposal - An offer submitted in response to a negotiated procurement.

Right of First Refusal - The right provided to civilian employees, including term employees, permanent Nonappropriated Funds employees and term Nonappropriated Funds employees

adversely affected by a standard or streamlined competition. A term employee may be adversely affected if the term of the employee's appointment in the Federal service would extend beyond a conversion. The "Right of First Refusal" clause is contained in the Federal Acquisition Regulation, 52.207-3.

**APPENDIX B**  
**DATABASE OF STRATEGIC SOURCING INITIATIVES**  
**REPORTING REQUIREMENTS**

1. Public Law, OMB Circular A-76, and Department of Defense regulations require various reports relating to competition actions. Budget Submitting Offices are responsible to verify data as submitted by activities involved in Competition actions via the Navy Database of Strategic Sourcing Initiatives database (<http://dossi.navy.mil>) as detailed in this instruction. Approval and verification of all submitted reports occurs on a tiered basis in the system. Budget Submitting Offices must review and approve all reports before final Chief of Naval Operations (N1) approval. All reports are required for each public-private competition. The Chief of Naval Operations (N1) manages this data and uses it to communicate required A-76 program information to Congress and other interested parties. Detailed information required for the reports listed in this instruction can be found in the Database of Strategic Sourcing Initiatives database.
2. Budget Submitting Offices will coordinate with the Competitive Sourcing Acquisition Center of Excellence as necessary to submit the reports. Reporting responsibility may be delegated by the Budget Submitting Office when applicable.
3. Summary of Activity Reports Required for Standard and Streamlined Competitions

REPORT	REQUIRED	INFORMATION REQUIRED	REPORTING RESPONSIBILITY
Preliminary Planning Report	Before commencement of preliminary planning period	-Planning start/end date -Functions to be reviewed -Location(s) under review (State/Congressional District) -Estimated number of positions under review	Budget Submitting Office
Announcement Module	Before Congressional notification and competition start date	-Competition start/end date(s) -Scope, grouping of initiatives -Functions, locations (State/Congressional District) -Full time equivalents	Budget Submitting Office
Schedule and Point of Contact Report	Before competition start	-Competition schedule and officials **Any schedule revisions may be submitted via this report	Budget Submitting Office with Competitive Sourcing Acquisition Center of Excellence coordination
Solicitation Report	10 working days after issuance of solicitation	-Performance Work Statement start/completion date -Agency Tender start/complete date -Solicitation issue date -Solicitation type, kind	Budget Submitting Office with Competitive Sourcing Acquisition Center of Excellence coordination
Contest/Protest Notification Report	No later than 3 working days after receipt of contest/protest	-Contest/protest source -Contest/protest action disputed -Received date	Budget Submitting Office with Competitive Sourcing Acquisition Center of Excellence coordination
Contest/Protest Resolution Report	No later than 3 working days after resolution of contest/protest	-Resolution -Resolution date	Budget Submitting Office with Competitive Sourcing Acquisition Center of Excellence coordination

REPORT	REQUIRED	INFORMATION REQUIRED	REPORTING RESPONSIBILITY
Tentative Decision Report	No later than 3 working days after initial performance decision	-Initial performance decision date -Initial decision -Economic impact -Selected provider details	Budget Submitting Office with assistance from the Human Resources Advisor
Final Decision Report	No later than 3 working days after all contests are resolved	-Final performance decision date -Final performance decision -Economic impact -Selected provider details	Budget Submitting Office with assistance from the Human Resources Advisor
Conversion Report	No later than 30 days after authorization to perform by contract	-Decision information -Service provider information -Economic impact -Employee actions	Budget Submitting Office
Most Efficient Organization Implementation Report	Upon most efficient organization implementation but no later than 180 days after authorization of continued agency performance	-Decision information -Service provider information -Economic impact -Employee actions	Budget Submitting Office **Activities may submit
Annual Update Report	Annually, within 30 calendar days of the end of each performance period	-Service provider execution information (i.e., performance period cost, most efficient organization staffing, post implementation updates)	Budget Submitting Office **Activities may submit



**APPENDIX C**  
**PRINCIPAL STATUTES GOVERNING COMMERCIAL ACTIVITIES**

Budget Submitting Offices and activities should first consult with their Office of General Counsel on any questions concerning the statutes governing commercial activities. The Navy Strategic Sourcing Program Office will issue advisories regarding any changes to statutes.

1. 10 U.S.C. (selected sections).

a. Section 2461. Commercial or industrial type functions: required studies and reports before conversion to contractor performance.

(1) This section requires Congressional notification and analysis before changing a commercial or industrial function performed by more than 50 Department of Defense civilian employees to private sector performance.

(a) The notification must be made before commencing the analysis.

(b) Required content of the notice includes identification of the functions, locations, number of potentially affected civilian employees, anticipated length and cost of the analysis, and budgetary line item for the funds.

(c) A certification is required that the proposed analysis is not the result of predetermined constraints or limitations on civilian employees in terms of man years, end strengths, full time equivalents, or the maximum number of employees.

(2) The analysis is required to include estimated costs of performance by the private sector and Department of Defense civilian employees that demonstrate cost savings to the Government over the life of the contract to change performance.

(a) To change performance, the analysis must also include the economic affect on employees and local community as well as the effect on military mission.

(b) The analysis must be available for examination and a change to contract performance cannot begin until a report of the result of the analysis has been submitted to Congress.

(3) A report must be submitted to Congress providing the results of the analysis whether the performance decision is to obtain the function by agency or private sector performance.

(4) The analysis requirements of this statute are waived for contracts with qualified entities under the Javits-Wagner-O'Day Act.

(5) The Department of Defense is required to submit an annual report of the extent of performance of commercial and industrial type function by Department of Defense civilian employees and by private contractors.

b. Section 2461a. Development of system for monitoring cost savings resulting from workforce reductions. Establishes monitoring and annual reporting requirements for the results of A-76 competitions, including costs and savings.

c. Section 2462. Contracting for certain supplies and services required when cost is lower. Except as otherwise provided by law, requires the Department of Defense to procure supplies or services from the private sector when such are available at lower cost than that which the Department of Defense can itself provide. When conducting a cost comparison to determine whether to contract for performance of a function, requires the Secretary of Defense to ensure costs considered are fair and reasonable and reflect all costs such as quality assurance, technical monitoring, liability insurance, employee retirement and disability benefits and all other overhead costs.

d. Section 2463. Collection and retention of cost information data on converted services and functions. Requires the collection and retention of cost information with respect to converting the performance of a service or function to contractor performance for the term of the contract (not to exceed 5 years) and for conversion from contractor to in-house performance for 5 years.

e. Section 2464. Core logistics capabilities. Requires the maintenance of a "core logistics capability" that is government-owned and government-operated to repair and maintain weapons systems. These government-owned and government-operated facilities must be assigned sufficient workloads to maintain their capability and to ensure cost efficiency and technical competence in peacetime while preserving surge capacity and reconstitution capability. Workload needed to maintain a core logistics capability may not be contracted out under A-76. The Secretary of Defense may waive this restriction upon a finding that the workload is no longer required for national defense under criteria established in a regulation prescribed by the Secretary of Defense. Such a waiver must be provided to Congress with a 30-legislative day waiting period.

f. Section 2465. Prohibition on contracts for performance of firefighting or security-guard functions. This statute generally prohibits entering into a contract for the performance of firefighting or security-guard functions at a military installation or facility. Exceptions apply outside the United States, at Government-Owned, Contractor Operated installations, where a contract was in place before 24 September 1983, and for firefighting functions for periods of 1 year or less, that in the absence of the contract, would have to be performed by members of the armed forces who are not available by reason of a deployment.

g. Section 2467. Cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison. Requires the inclusion of retirement costs in A-76 cost comparisons. Requires at least monthly consultation with employees (or representatives) and consideration of their views in developing Performance Work Statement and management study efforts. Requires Congressional notification of a waiver of A-76 cost comparison in a decision to convert to contract performance.

h. Section 2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition. A-76 does not apply to public-private competitions to change performance of depot level workload of \$3 million that is being performed by a Department of Defense depot activity.

2. 16 U.S.C. 670a, Conservation/Cooperative Plan for Wildlife Conservation and Rehabilitation. With regard to the implementation and enforcement of cooperative plans agreed to under subsection (a) of this section.

a. Neither the OMB Circular A-76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement.

b. Priority shall be given to entering into contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish or wildlife. This statute is implemented through DODI 4715.3 of 3 May 1996.

3. Annually, the Defense Appropriations Act contains a provision that prohibits spending any funds to convert to contractor performance any function of more than 10 civilian employees without a public-private competition that includes a most efficient and cost effective organization plan developed by such activity or function; and Competitive Sourcing Official determination that the cost of performance of the activity would be less costly to the Department of Defense by 10 percent of the most efficient organization's personnel related cost or \$10 million. A second general provision prohibits spending funds for studies that exceed 24 months for single function initiatives and 30 months for multi-function initiatives.

#### Section 8014

(a) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE - None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by more than 10 Department of Defense civilian employees unless:

(1) The conversion is based on the result of a public-private competition that includes a most efficient and cost effective organization plan developed by such activity or function.

(2) The Competitive Sourcing Official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Department of Defense by an amount that equals or exceeds the lesser of 10% of the most efficient organization's personnel-related costs for performance of that activity or function by Federal employees or \$10 million and the contractor does not receive an advantage for a proposal that would reduce costs for the Department of Defense by:

(a) Not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of that activity or function under the contract.

(b) Offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Defense for health benefits for civilian employees under chapter 89 of 5 U.S.C.

b. Exceptions

(1) The Department of Defense, without regard to subsection (a) of this section or subsections (a), (b), or (c) of section 2461 of 10 U.S.C., and notwithstanding any administrative regulation, requirement, or policy to the contrary shall have full authority to enter into a contract for the performance of any commercial or industrial type function of Department of Defense that:

(a) Is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47).

(b) Is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals per that Act.

(c) Is planned to be converted to performance by a qualified firm under at least 51 percent ownership by an Indian

tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), or a Native Hawaiian Organization, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).

(2) This section shall not apply to depot contracts or contracts for depot maintenance as provided 10 U.S.C. 2469 and 2474.

c. Treatment Of Conversion - The conversion of any activity or function of the Department of Defense under the authority provided by this section shall be credited toward any competitive or outsourcing goal, target, or measurement that may be established by statute, regulation, or policy and is deemed to be awarded under the authority of, and in compliance with subsection (h) of 10 U.S.C. 2304, for the competition or outsourcing of commercial activities.

d. Section 8022. None of the funds appropriated by this Act shall be available to perform any cost competition pursuant to the provisions of OMB Circular A-76 if the competition being performed exceeds a period of 24 months after initiation of such competition with respect to a single function activity or 30 months after initiation of such competition for a multi-function activity.

4. Annually, the National Defense Authorization Act contains provisions that may affect sourcing of commercial activities in the Department of Defense. These are generally found within the Title pertaining to Operations and Maintenance and further within the subtitle pertaining to workplace and depot issues.

5. Public Law 96-107, section 802. Waiver of applicability of OMB Circular A-76 to contracting out of certain research and development activities. This law provides that A-76 does not apply to certain direct research and development functions, but does apply to certain research and development support functions.

6. 18 U.S.C. 1905. Disclosure of confidential information generally. This law makes it a crime for a Federal employee or officer to disclose any manner of trade secret, such as

confidential business information, obtained in the course of official duties, to any person except as authorized by law.

7. 5 U.S.C. 3106. Employment of attorneys; restrictions; 28 U.S.C. 514. Legal services on pending claims in departments and agencies. Except as otherwise authorized by law, these laws prohibit contracting for legal services and reserve to the Attorney General the authority to provide professional legal services.

8. Public Law 103-62, Government Performance and Results Act of 1993. This law makes the specific functions of preparing strategic plans, performance plans, and program performance reports Inherently Governmental and requires performance by Federal employees.

9. Public Law 105-270, Federal Activity Inventory Reform Act. This law provides a statutory definition of Inherently Governmental functions and requires annual inventories of commercial activities.

10. Title 31 U.S.C. 3552(b) provides standing to "the official responsible for submitting the Federal agency tender in a public-private competition conducted under Office of Management and Budget Circular A-76 regarding an activity or function of a Federal agency performed by more than 65 full-time equivalent employees of the Federal agency" to file a protest with the Government Accountability Office. In addition, "At the request of a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to such public-private competition, the official shall file a protest in connection with such public-private competition unless the official determines that there is no reasonable basis for the protest." An agency tender official shall provide written notification to Congress whenever the official makes a determination that there is no reasonable basis for a protest. A person representing a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to the public-private competition may intervene in a protest if an interested party files one. This provision is effective for competitions initiated 90 or more days after the effective date of the fiscal year National Defense Authorization Act (PL 108-375, October 28, 2004).

**APPENDIX D**  
**COMPETITIVE SOURCING PUBLIC AFFAIRS GUIDANCE**

1. General Information. Due to the Competitive Sourcing Program's potential effect on an activity's workforce and upon the surrounding community, it is essential there be close coordination between affected installation commanders, activity commanders, local program managers, and area chain of command public affairs officers.

a. The Chief of Naval Operations (N1) coordinates and directs overall policy regarding the Navy's Competitive Sourcing Program.

b. The Chief of Naval Operations (N1) notifies activities of functions approved for competition. The notification authorizes local announcement of the competition using the statements contained in the following paragraphs, with appropriate local information inserted.

2. Congressional Notifications. The Chief of Naval Operations (N1) prepares the notification to Congress of competitive actions as required.

a. Courtesy Congressional Notification. It is Navy policy to provide Congress with a Courtesy Congressional Notification of preliminary planning actions. The Chief of Naval Operations (N1) provides Congress with a list of all functions, congressional districts, states and number of Full Time Equivalents nominated for potential competition.

b. Intention to Analyze Functions. The Chief of Naval Operations (N1) reviews all functions nominated for competition. If the functions are approved for competition, the Chief of Naval Operations (N1) prepares a list, by location, of functions to be analyzed for distribution to members of Congress by the Office of Legislative Affairs. The Chief of Naval Operations (N1) also prepares letters to the Speaker of the House and the President of the Senate advising them of the planned analysis.

c. Intention to Contract - Sealed Bids. The contract award decision will be made at the conclusion of the competition, a process that includes bid opening, determination of the apparent



low bidder, completion of any contests, and a pre-award survey, if required. If a contract award is indicated, the Chief of Naval Operations (N1) coordinates Congressional notification of the Navy's intention to award a contract. Upon notification, the Chief of Naval Operations (N1) will authorize contract award.

d. Intention to Contract - Negotiated Procurements. If, after examining all proposals, there is an apparent successful offeror, a tentative contract award is made contingent upon the outcome of the contest/protest process. If contract award persists after completion of the contest process, the Chief of Naval Operations (N1) coordinates Congressional notification of the Navy's intention to authorize performance by contract. The Chief of Naval Operations (N1) will advise the activity of the Congressional notification and will authorize commencement of the contract.

e. Decision for Agency performance. Congressional notification is required when the competition determines the agency will retain the function. This notification is coordinated through the Chief of Naval Operations (N1).

3. Local Announcements. Public announcement will be made to all affected parties, including tenants, local activities, and employee groups and unions upon a decision to conduct a competition, award a contract, or continued agency performance of the functions. While each message must be tailored to the specific situation and location, certain aspects of notification are common and may be disseminated by a common template of information. Example media statements are at the end of this appendix.

4. Inquiries. The following questions and answers may be used to respond to questions generated by local interest and involvement. Some of the inquiries may cross chain of command and local activity lines of responsibility, requiring compilation of information from a variety of affected installations or tenant commands. Communication between area public affairs officers is essential to ensuring a smooth flow of information and presenting a coordinated response to legitimate local concerns.

Q1: Will contracting have any influence on our military readiness since civilian contractors instead of military personnel may perform these functions?

A1: These functions have been reviewed and it has been determined that contract performance will not affect readiness.

Q2: What other installations could be subject to contracting?

A2: Most Navy installations in the United States, its territories and possessions, and the Commonwealth of Puerto Rico have functions that could be included in the commercial activities program.

Q3: Will contractors offer employment for civilians displaced as a result of conversion?

A3: Contractors will give Federal employees displaced as a result of a conversion their "Right of First Refusal" for employment opportunities in positions for which they are qualified.

Q4: What do these competitions involve?

A4: Competitions involve the identification of the cost of agency performance and the solicitation of bids/offers from the private sector for identified functions. A Performance Work Statement, specifying the organization's requirements, is developed for inclusion in the solicitation. The Performance Work Statement forms the basis of the Agency's Tender and most efficient organization developed to compete against the private sector and public reimbursable offers. The most efficient organization is used to determine costs for the Agency's estimate used in the competition. If the competition reveals the cost of contractual performance is less than the cost of Agency performance the function will be contracted.

Q5: When will the competitions start?

A5: Competitions for functions will begin after public announcement.

Q6: Who will conduct the competitions?

A6: Competitions will be conducted primarily by Navy personnel at each installation. Expert consultants may be used to assist with the competition.

Q7: Will an environmental impact analysis be conducted before conversion?

A7: The Navy will comply with all current regulations concerning environmental impact requirements.

Q8: Will employees and unions at various activities be notified of the competitions?

A8: Yes.

Q9: Is there a specific cost savings goal for this project?

A9: No. There are no preconceived goals established since each action must be handled on an individual basis.

5. Other Media Inquires. Refer inquiries beyond the scope of this guidance to the Chief of Information, Navy Department News desk. Refer Navy Public Affairs policy questions to the Chief of Information, Navy Department Plans, Policy, and Community Relations Office. Refer questions regarding Competitive Sourcing Program policy to the Chief of Naval Operations (N1).

a. Example text body for media advisory before the start of Preliminary Planning:

City and State - The Navy has begun the Preliminary Planning process, in accordance with the Office of Management and Budget (OMB) Circular A-76, to determine the feasibility of conducting a public-private competition for various support functions at [identify activities] at [identify naval installations]. This initiative is under the cognizance of [identify Budget Submitting Office]. Currently, there are approximately [provide numbers] military and civilian personnel involved in the Preliminary Planning. A public announcement of any competitions deemed appropriate will be made after the completion of the Preliminary Planning process.

b. Example text body for media advisory for announcement of competition:

City and State - The Navy announced its initiation of competitions to determine the feasibility and economy of converting various support functions to contractor performance at local area [*identify activities*] at [*identify naval installations*]. The competition is under the cognizance of identify claimancy. Currently, there are approximately [*provide numbers*] military and civilian positions affected by the competition. Decisions to convert functions to contract will be made only if the competitions indicate that significant savings of tax dollars can be achieved. If such decisions are made, Congress and the public will be notified of the results of the competition. Any employees adversely affected will receive assistance from Federal placement programs including relocation, in obtaining transfer rights to other positions in the Department of Defense or to other Federal agencies, at government expense, if necessary.

c. Example text body for announcement of competition to employees and unions:

This letter is to advise you that a competition of the [*name*] function will be conducted to determine if it is more cost effective for the Navy to continue to perform the function or to convert it to contract. The function is being considered as part of a Navy-wide review of commercial activities being undertaken per direction of Office and Management and Budget (OMB) Circular A-76, Performance of Commercial Activities.

The Circular requires periodic review of each commercial activity to determine if continued performance by Government personnel is economical. Both the Government and contract cost figures used in the competition are based on the same scope of work and the same performance standard to assure a fair comparison and continued high level of performance. If the costs of contracting are lower than the costs of continued Government performance, the function is converted to contract.

Teams will be formed to coordinate the competition. A Performance Work Statement team, led by [*state name, command*

*code, telephone number*], will develop the Performance Work Statement, outlining the work results required. From the Performance Work Statement, the Agency's Tender and most efficient organization for the performance of the functions will be determined. A most efficient organization team, led by [*state name, command code, telephone number*], will develop the most efficient organization, and the cost of the most efficient organization will be computed to estimate the costs of continued performance by Government personnel. To avoid any appearance of conflict of interest, members of the Performance Work Statement team will not be members of the most efficient organization team. Your suggestions on the preparation of the Performance Work Statement and most efficient organization are solicited, consistent with firewall restrictions.

In an effort to minimize the personnel hardships on the event of conversion, every effort will be made to assist the affected employees in obtaining Federal or other employment. Affected employees will be eligible for placement under the Department of Defense Priority Placement Program. In addition, in the event of a decision to convert to contract, the contract will include a provision, consistent with Government post-employment conflict of interest standards, that the contractor will give affected employees their right of first refusal for employment openings on the contract in positions for which they are qualified.

d. Example text body for announcement of conversion to contractor operation:

The Navy announced today its decision to convert various support functions [*or list function(s)*] at [*activity(ies)*] in the [*location(s)*] under the cognizance of [*command or activity*] to contractor performance. A contract was awarded to [*name of contractor*]. There were [*number*] military personnel and [*number*] Navy civilian personnel performing the functions before the decision to convert to contract. The decision to convert the functions to contract was made after a detailed competition indicated that significant savings of tax dollars could be achieved. Congress and the public have been notified according to normal procedures. The civilian employees affected are receiving assistance from Federal placement programs in obtaining transfer or reassignment to other positions in the Department of Defense or to other Federal agencies. Civilian

employees affected also have the right of first refusal for employment openings on the contract in positions for which they are qualified.

e. Example text body for announcement of continued Agency performance:

The Navy announced today that it will continue various support functions [*or list functions*] at [*activity(ies)*] in the [*location(s)*] under the cognizance of [*command or activity*]. Currently there are [*number*] military personnel and [*number*] Navy civilian personnel performing the functions. Because of efficiencies identified in this competition, the Navy expects that [*number*] of these positions will be eliminated. The civilian employees affected by this decision are receiving assistance from Federal placement programs in obtaining transfer or reassignment to other positions in the Department of Defense or to other Federal agencies. The decision to retain the performance of the functions in the government was made after a detailed competition indicated it was more cost effective to continue to perform the functions by Governmental personnel than by contract.

**APPENDIX E**  
**ETHICS ISSUES RELATED TO PARTICIPATION IN OMB CIRCULAR A-76**  
**COMPETITION AND EXERCISE OF RIGHT OF FIRST REFUSAL OF EMPLOYMENT**

1. It is policy of the Department of the Navy to seek, where possible, to minimize the potential restrictions on the post-Government employment of employees whose positions may be affected by a competitive sourcing initiative. As a general matter, employees are not restricted from post-Government employment opportunities if they are simply involved in providing information, such as workload data, to A-76 Performance Work Statement and management teams or contract source selection or technical evaluation teams. Participating actively as a management plan or Performance Work Statement team member will not normally restrict a Government employee from accepting post-Government employment. Such participation; however, may limit the nature of the activities in which former employees may engage on behalf of their new employer (i.e., representing that new employer before the Government on that same contract). The mere provision in a solicitation of a right of first refusal for vacancies for affected Government employees does not create a disqualifying interest for any employee.

2. Employees participating personally and substantially in the A-76 process will be required to disqualify themselves from further participation in the event that they are negotiating or seeking employment with a company competing on the source selection. The Procurement Integrity Act imposes specific reporting and disqualification requirements on employees who contact or are contacted by competing contractors regarding potential future employment. Also, serving in certain positions or making specified decisions with respect to a procurement exceeding \$10 million may prohibit a former employee from accepting compensation from the contractor for 1 year.

3. Employees should be advised of the basic ethics laws and regulations early in the competition process. Except for limited individuals under the Procurement Integrity Act, Government ethics rules will not generally preclude an employee from accepting post-Government employment with a contractor should the function under competition be converted to contract performance. Certain factual circumstances may result in the

imposition of a restriction or prohibition. Therefore, employees should be advised to seek specific guidance from an ethics counselor early in the process, particularly should they seek employment with or be contacted by a contractor expressing interest in the function under competition.

4. Employees should be advised of the conflict of interest restrictions in:

- a. 18 U.S.C. 207 and 208 (these are criminal provisions).
- b. 41 U.S.C. 423 - Procurement Integrity
- c. 5 CFR 2635. These provisions, in certain circumstances, may affect an employee's or former employee's ability to:
  - (1) Seek and negotiate for post-government employment.
  - (2) Work for a particular company.
  - (3) Represent the company before the Government on certain matters.

5. Navy ethics counselors have access to briefing materials on A-76 competition-related ethics issues and should be consulted if any questions arise.